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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF TENNESSEE

OnSoble, Inc.,

Plaintiff;

v.

Maria O'Rourke,

Defendant.

Civil Action No. 3:16-cv-493

Jury Trial Demanded

**RESPONSE TO DEFENDANT'S NOTICE OF FACTUAL
CLARIFICATION AND MOTION FOR RECONSIDERATION**

Pursuant to Federal Rule of Civil Procedure 60(b), Plaintiff responds to Defendant's Notice of Factual Clarification, supplements Defendant's Notice of Factual Clarification with additional facts, and moves the Court to reconsider its Order granting Defendant's Motion to Transfer. This case should be tried in the United States District Court for the Middle District of Tennessee. Plaintiff supports this motion with a Memorandum of Law. As grounds and additional facts, Defendant states:

1. Defendant first filed her lawsuit against Plaintiff in the Superior Court of the State of California for the County of Marin.
2. On May 11, 2016, the Superior Court of the State of California for the County of Marin determined that Marin County was not the proper venue for the matter and ordered the case be transferred to Los Angeles County.
3. In its Memo (Docket No. 27), this Court cited as a reason for granting the transfer, "this case is closely related to the case first-filed in the Northern District of California."
4. Defendant has no pending litigation against Plaintiff in the Northern District of California, and Defendant has never had pending litigation against Plaintiff in the Northern District of California.
5. Defendant's California state claim alleges default on a promissory note, not a purchase agreement. Defendant has no pending litigation in which Plaintiff is alleged to have breached a purchase agreement, and Defendant has made no claim nor demand for the intellectual property at issue in the instant case.

6. Plaintiff's ownership of the intellectual property at issue in this case is undisputed, and the result of the State litigation in California could not potentially change whether Plaintiff actually owns that intellectual property.
7. Plaintiff, in this action, does not address the issue of the non-compete clause of Defendant's employment agreement as it is not pertinent to the instant case. Whether or not Defendant violated her employment agreement is not a claim in Plaintiff's Complaint and need not be contemplated by this court.
8. This Court relied upon the "case first-filed in the Northern District of California" in its memo as the only discussed factor weighing in favor of transfer when granting Defendant's Motion to Transfer. However, because there is no case first-filed in the Northern District of California, Defendant has not overcome its substantial burden of proving that transfer is warranted.
9. In fact, because the private interests of the parties and public-interest concerns are either neutral or weigh in favor of Plaintiff, Defendant's Motion to Transfer should be denied.

Respectfully submitted,

/s/John Tennyson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being electronically filed and will be furnished via CM/ECF on this 16th day of May, 2016, to:

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/s/ John Tennyson
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